MISCELLANY.

Procedure by Rules of Court.—The Virginia legislature has adopted a revolutionary measure in an act which provides that the "Supreme Court of Appeals shall from time to time prescribe the forms of writs and make general regulations for the practice of all courts of record, civil and criminal; and shall prepare a system of rules of practice and a system of pleading and the forms of process to be used in all the courts of record in this State, and put the same in effect." [Acts 1916, p. 939.]

In commenting on this act, the Committee on Reform of Judicial Procedure of the Virginia Bar Association says:

"There no longer remains a question of the power of the Supreme Court of Appeals to substitute rules for statutes in the regulation and direction of the trial courts. The statute is sufficiently broad to re-establish the organic equable division of power and duty between the Legislative and Judicial departments. This being the great principle involved there need be no regret at the failure of a small appropriation to defray certain necessary incidental expenses of the court. This will be provided. The failure to create a statutory commission to aid the court in its work, is as it should be, because the court is left free to proceed with or without a commission as appeals to its judgment. It is unhampered by any statutory restriction whatever. This was the case with the federal equity rules and it worked well. * * *

"The unanimous voice of the Virginia legislature in complying with a recommendation of this association, in view of the voluntary surrender of power improperly but uninterruptedly, exercised for more than half a century, manifests an inspiring faith of the people in their organized lawyers. It marks a new era of judicial relations assuring the division of governmental power entertained by the founders of governments in America, as is evidenced by all of their correspondence and public utterances. * * *

"There will be no one to dispute that the new and wholesome sentiment manifest in Virginia and all over the United States adds to the present responsibility of lawyers and judges and should quicken in them a livelier sense of duty and a renewed spirit of service. There must be no backward step. The opportunity is present to perfect in this State a system of simple correlated rules, even more perfect than those in use in the English nisi prius courts, which will reflect the genius of the government and which will justify the confidence of the people in their lawyers and their courts."

So far as we are advised, Virginia is the first State to transfer to the judiciary the whole business of prescribing in what manner the courts shall exercise their functions. If there are any others we should be glad to be advised of the fact, in order that we may ex-

amine the system of procedure which has been adopted in those States and compare it with that prevailing in this and all other States, under which the great body of the law of procedure is enacted into statutory form, and the rules of court cover only minor matters as to which the legislature has not seen fit to act. The Practice Act of Illinois covers twenty-four large and close printed pages, containing 126 sections. In addition thereto a very large part of the procedural law of this State is found in the chapters relating to the several courts, especially the very elaborate legislative monstrosity known as the Municipal Court Act, the Criminal Code and other statutes which it would be tedious to enumerate. Once a provision relating to procedure finds its way into the statute book—often without any general knowledge thereof on the part of the members of the bar—it establishes a hard and fast rule which the courts are bound to follow, until such time as some enterprising lawyer with a desperate case applies the rack and thumb screws of constitutional limitations to it, and draws from it a confession of heresy—in other words, obtains a decision of the Supreme Court holding it unconstitutional. And, in the meantime, however objectionable the procedure so prescribed may be deemed by that tribunal, it has no power to set it aside. That can be accomplished only by an appeal to the legislature and, strange as it may seem, it is often harder to secure the repeal of an objectionable rule than it was to secure its enactment.

The Illinois Practice Act is now nine years old. It was intended to take the place of a series of statutes dating back to a period long before the adoption of our present constitution, twenty in number, and in its preparation the legislature had the assistance of the Chicago Bar Association, the Illinois Bar Association and many eminent lawyers acting on their own initiative. It was a great improvement on the ancient mosaic whose place it took; but, as is always the case in any practice act, flaws were discovered from time to time, as is evidenced by numerous amendments. Every such amendment requires that the legislature be in session and a committee, or rather, two committees, not likely to be composed of the most eminent jurists in the State, must be convinced of the necessity of the amendment, and some one or more persons must give his or their attention to seeing that it does not get lost in the shuffle and die in a pigeonhole.

How infinitely better, how infinitely simpler to leave the whole matter in the hands of the judges who must know far better than a legislature composed of all classes—farmers, merchants, blacksmiths, saloon-keepers and professional politicians, with a rather heavy sprinkling of lawyers—how a lawsuit should be begun, prosecuted and ended, and who can amend in a day, if deemed advisable, a rule which has proved to be harmful.

Innumerable instances of the evils of a rigid and inflexible code of

practice, which can be altered only by the expenditure of the energy requisite to the procurement of any kind of legislation, will occur to every lawyer. To go no further, Section 23 of the Municipal Court Act, which provides for the review of cases of the fourth class, has caused more profanity among lawyers and has cost litigants greater losses than any one paragraph which we can think of in any other statute. It disturbed the long established practice in regard to bills of exceptions, not to correct the obvious defects of the practice, but to add others which proved veritable pitfalls for the unwary. The intention was, no doubt, laudable, but the execution was imperfect, and what the draftsman and the legislature did not do in the way of mischief, the courts added by construction.

If the paragraph had been enacted by the Supreme Court, in the form of a rule of court, it could have been changed over night, either on the court's own perception of its defects, or on the urging of lawyers whose feet had been ensnared, for instance, by the description of the two forms of bills of exceptions provided for, or sought to be provided for, therein. This could not be done, and, apparently, lawyers are either content to leave the paragraph in its present shape, with the construction given to it by the court, or they fear that worse things will happen to them if they take the matter before the legislature, to become the subject of clinics at the hands of all sorts of legislative surgeons. "Better bear the ills we have than fly to others that we know not of."

We shall await with much interest the publication of the Virginia Rules of Procedure and, if they do not prove unduly long, will reproduce them for the benefit of our readers and the instruction of our legislators.—National Corporation Reporter.

Effect of Conditions on Telegraph Blank.—After very carefully examining the authorities with respect to the effect of special stipulations on the reverse side of a telegraph blank, upon the right of the sendee to maintain an action, and the extent of his recovery thereunder, it appears, writes H. S. Yohe, in the September Case and Comment, that there are two rules on the subject,—the one known as the English doctrine and followed by the court of England and Canada; the other the American rule, now generally adhered to by all the states in the Union. The former rule holds that the right of recovery against telegraph companies must be founded in contract, and in the absence of facts making the sendee a party or privy to the contract, or unless the message was an intentional fraudulent representation, he has no right of action. Under the American rule, recovery is generally permitted on one of the following grounds: (1) Telegraph companies are public agencies and therefore owe a duty to the sendee as well as sender to transmit the message cor-

rectly. No state, however, with the exception of Kentucky, has gone to the extreme of holding that telegraph companies are common carriers and liable to the same extent. (2) When the sender is acting as agent of the receiver, some courts hold the sendee is bound by the stipulations on the blank, while other courts hold the contrary. (3) The general trend of opinion is that when the telegraph company knows the sendee is to be benefited by the message, or when the message itself indicates a commercial transaction of importance or pecuniary value, the company is liable to the sendee.

IN VACATION.

There had been a railway collision near a country town in Virginia, and a shrewd lawyer had hurried from Richmond to the scene of the disaster. He noticed an old colored man with a badly injured head, and hurried up to him where he lay moaning on the ground.

"How about damages?" began the lawyer.

But the sufferer waved him off.

"G'way, boss, g'way," he said. "I never hit de train. I never did sich a thing in all mah life, so help me Gawd! Yo' can't git no damages outer me."—New York Evening Post.

"Never state as a fact anything you are not certain about," the great editor warned the new reporter, "or you will get us into libel suits. In such cases use the words 'alleged,' 'claimed,' 'reputed,' 'rumored,' and so on."

And then this notice appeared in the society notes of the paper:

"It is rumored that a card party was given yesterday by a number of reputed ladies. Mrs. Smith, gossip says, was hostess. It is alleged that the guests, with the exception of Mrs. Belinger, who says she hails from Leavitts Junction, were all from here. Mrs. Smith claims to be the wife of Archibald Smith, the so-called 'Honest Man,' trading on Key street."—St. Louis Star.